

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In re DEUTSCHE BANK AG	:	
SECURITIES LITIGATION	:	
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	:	09 Civ. 1714 (DAB)
This Document Relates To:	:	
	:	
ALL ACTIONS	:	
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**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO AMEND ORDER
APPOINTING CO-LEAD COUNSEL**

The undersigned counsel respectfully moves this Court for an Order to amend this Court’s Order entered on November 23, 2009, naming Murray, Frank & Sailer LLP¹ (“Murray Frank”) as one of the Co-lead counsel and to substitute Glancy Binkow & Goldberg LLP (“Glancy Binkow”) in place of Murray Frank. The law firm of Murray Frank is dissolved. Since the inception of this case, Brian Murray and Lee Albert, both formerly of Murray Frank, and currently with Glancy Binkow, have managed the case on a day-to-day basis for their firm, on behalf of the Co-Lead Plaintiffs, and have been intimately involved in the litigation. Indeed, both Mr. Murray and Mr. Albert are completely familiar with all of the law, facts, and issues of the case.

FACTS AND PROCEDURAL HISTORY

This case was initially filed in February, 2009. On November 23, 2009, the firms of Murray Frank & Sailer LLP and Robbins Geller Rudman & Dowd LLP and the Law Offices of Bernard M. Gross, P.C. were appointed Co-Lead Counsel, on behalf of Lead Plaintiffs Norbert Kaess, Maria Farruggio, and Belmont Holdings Group (Dkt. # 27). Mr. Albert left Murray Frank LLP on October 1, 2012 and joined Glancy Binkow & Goldberg LLP as a partner. On December 31, 2012, Murray Frank LLP dissolved as a law practice. Mr. Murray has since joined the law firm of Glancy Binkow

& Goldberg LLP as a Partner. Mr. Murray and Mr. Albert respectfully move to amend the prior Order to substitute Glancy Binkow & Goldberg LLP for Murray Frank LLP as Plaintiffs' Co-Lead Counsel. The Co-Lead plaintiffs Norbert Kaess and Maria Farruggio, who were initially represented by Murray Frank LLP, have signed new engagement letters with Glancy Binkow and Goldberg LLP and they support this motion. *See* Decls. Of Norbert Kaess and Maria Farruggio attached as Ex. A and B.

On January 25, 2010, an amended complaint was filed by plaintiffs. Defendants moved to dismiss this complaint and after briefing, this Court granted in part and denied in part the motion (Dkt. # 59). Defendants moved to reconsider this decision, and on August 10, 2012, the Court granted the motion dismissing all claims (Dkt. # 70). Plaintiffs filed a motion to reconsider this order, which motion was denied on May 15, 2013 (Dkt. # 78). On June 13, 2013, a Notice of Appeal was filed (Dkt. # 80). The Appeal is currently pending in the Second Circuit Court of Appeals (Docket number 13- 2364). Although the filing of a Notice of Appeal divests the district court of jurisdiction over matters relating to the appeal, the district court retains jurisdiction over ancillary matters. This Court has noted "the filing of a notice of appeal 'confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal'." *In re Amer. Int'l Group Inc. Sec. Litig.*, 2013 WL 658158, at *1 (S.D.N.Y. Feb 21, 2013) (quoting *Tancredi v. Metro Life Ins. Co.*, 378 F.3d 220, 225 (2d Cir. 2004) (citing *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982))). The instant motion does not concern an aspect of the case on appeal (the dismissal of the case on the merits), but rather concerns a collateral matter (substitution of lead counsel). As such, this Court has jurisdiction over this motion. *See Syrnik v. Polones Construction Corp.*, 2012 WL 4122801, at *1 (S.D.N.Y. Sept. 19, 2012) (despite

¹ On July 9, 2011, Jacqueline Sailer resigned and the firm name changed to Murray Frank LLP.

pending appeal, district court retained jurisdiction over collateral matter); *Knutson v. AG Processing*, 302 F. Supp. 2d 1023, 1031 (N.D. Iowa 2004) (appeal only divests district court of jurisdiction over matters appealed).

Thus, it is appropriate that Brian P. Murray and Lee Albert continue as Co-Lead Counsel based on their substantial experience and demonstrated commitment to the case. Mr. Murray and his team at Glancy Binkow and Goldberg will continue to fulfill their responsibilities and obligations to the class as Plaintiffs' Co-Lead Counsel.

For all of the aforementioned reasons, counsel respectfully request that the Court amend its Order and substitute Glancy Binkow & Goldberg LLP for Murray Frank LLP as Plaintiffs' Co-Lead Counsel in this litigation.

Dated: November 27, 2013

GLANCY BINKOW & GOLDBERG LLP

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing Notice of Motion to Amend Order of November 23, 2009 for Co-Lead Counsel, Memorandum of Law in Support, Declaration of Norbert G. Kaess and Maria Grazia Farruggio, and Proposed Order, was served on the 27th day of November 27, 2013, copies of the above documents and this Certificate of Service was served via the electronic filing system.

GLANCY BINKOW & GOLDBERG LLP

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